



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BF72

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;
Fisheries of the Northeastern United States; Amendment 19 to the Atlantic Sea
Scallop Fishery Management Plan**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The New England Fishery Management Council has submitted to NMFS Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan which proposes to incorporate a specifications process into the Atlantic Sea Scallop Fishery Management Plan and to change the start of the fishing year from March 1 to April 1. The ability to develop specifications to set annual or biennial allocations would allow for a more timely process for setting annual allocations than currently possible with framework adjustments. By adjusting the start of the scallop fishing year from March 1 to April 1, NMFS would be able to implement simple specification actions at the start of the fishing year on a more consistent basis. NMFS requests public comments on whether NMFS should approve this amendment and the draft Environmental Assessment incorporated in the amendment.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER**

DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2016-0028, by any one of the following methods.

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2016-0028,
2. Click the “Comment Now!” icon, complete the required fields
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 19), and of the draft Environmental Assessment (EA) and Regulatory Impact Review, are available from the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. The EA/RIR is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978-281-9244.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The New England Fishery Management Council approved Amendment 19, which would authorize the Council to develop specifications to set annual or biennial allocations and change the start of the scallop fishing year from March 1 to April 1. The Council submitted its final version of Amendment 19 to NMFS for review on June 16, 2016. NMFS has declared a transmittal date of July 14, 2016. The Council has reviewed the Amendment 19 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. If approved by NMFS, this amendment would simplify the specifications-setting process and enable scallop allocations to be implemented closer to the scallop fishing year.

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council has had to rely on the framework adjustment process to set scallop fishery measures, often referred to as specifications, that occur annually or

biennially. Typically, these specifications include annual catch limits, days-at-sea (DAS), rotational area management, possession limits, access area trip allocations, individual fishing quota (IFQ) allocations, and allocations for vessels with Northern Gulf of Maine permits. These framework adjustments often include other management measures and are often implemented 2 to 3 months after the March 1 start of the scallop fishing year (March 1 through February 28/29).

Amendment 4 to the Scallop FMP (59 FR 2757, January 19, 1994), was a major shift in scallop fishery management. It established a limited access permit and effort control program and the new permits and effort control became effective on March 1, 1994. Framework Adjustment 1 (59 FR 36720, July 19, 1994) formally adopted March 1 as the start of the scallop fishing year. There was no biological or economic rationale originally for selecting this date as the start of the fishing year: Framework 1 codified the March 1 Amendment 4 effective date as the start of the fishing year so that allocations for 1994 spanned a 12-month period in order to ensure a reduction in fishing effort the first year of the DAS effort-control program. This fishing year has remained in place since that time, even though specifications have become increasingly more complicated with the development of the scallop access area rotation program in 2004 and IFQ fishery in 2010.

In the last 16 years following Framework 11, there have been 12 actions that set annual scallop specifications. Four of those actions set specifications for 2 years, which ensured that the second year's specifications for each of those actions were implemented on March 1. Aside from these biennial frameworks, we have only been able to set specifications by March 1 on two occasions, both involving special circumstances (i.e.,

the proposed rule was waived for one framework action and Council took final action 2 months earlier than usual for the other action).

Typically, the Council begins developing a specifications-setting framework in June. Scallop biomass estimates are provided through scallop surveys conducted by NMFS and other research institutions in the spring and summer. These estimates are not generally available for consideration until the early fall, at which point the Scallop Plan Development Team (PDT) develops and analyzes fishery allocation alternatives for Council consideration. In order to incorporate the most recent available scallop survey information into these alternatives, which has proved essential in setting appropriate access area catch levels, the Council has been taking final action in November and NMFS has typically implemented allocations in May or June.

In 2013, the Council began developing specifications on an annual basis via frameworks at the request of the industry to avoid biennial specifications that resulted in the second year specifications being out of sync with what the most recent annual surveys indicate could be harvested in a given area. However, this meant that the annual specifications were likely to be late every year due to availability of relevant data. To address this problem, the Council has been specifying “default” specifications for the year after annual specifications are set to fill the gap between the end of the fishing year and the setting of new specifications for the next fishing year. Implementing these “default” specifications every year is an administrative burden to NMFS staff and can result in complex inseason changes in fishery specifications. In addition, default specifications lead to confusion and uncertainty for the fleet, as well as potentially

negative impacts on the resource and fishery if effort shifts into areas or seasons that are less desirable as a result of delayed measures.

The Council initiated Amendment 19 to develop an alternative to the framework adjustment process to implement specifications closer to the start of the scallop fishing year. To address these timing issues while still supporting the current timeline for integrating the best available science in to the management process, Amendment 19 proposes to:

- Establish a specifications process so that allocations would not be tied only to actions that tend to have longer timelines (e.g., frameworks or amendments); and
- Adjust the scallop fishing year to April 1 through March 31.

Adding the ability to adjust allocations through a specifications setting process would produce some time-savings because the Council would not be required to discuss measures over the course of two Council meetings, as is required under the framework adjustment process. However, it would not guarantee allocations would be in place by March 1 of each year. As a result, the Council is recommending that the fishing year be changed to April 1 through March 31. Pushing the fishing year back one month would increase the likelihood that NMFS would be able to implement simple specifications actions at the start of the scallop fishing year on a more consistent basis, avoiding the need to implement default measures. Amendment 19 would also adjust the scallop permit year so that it continues to match the official fishing year (i.e., scallop permits would need to be renewed by April 1 of each year).

In addition, NMFS and Council staff discussed other, non-regulatory streamlining initiatives that will result in time-savings in implementing final allocations. These include preparing a decision draft of an EA immediately following the Council's final action on a framework and publishing a proposed rule prior to NMFS' formal review of the EA. These measures will assist in implementing simple, non-controversial specifications actions on a quicker timeline than typical frameworks.

We are soliciting public comments on Amendment 19 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 19 will be published in the **Federal Register** for additional public comment. NMFS will evaluate the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability to be considered in the approval/disapproval decision on Amendment 19. All comments received by close of business on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whether specifically directed to Amendment 19 or the proposed rule, will be considered in the approval/disapproval decision on the amendment.

Comments received after that date will not be considered in the decision to approve or disapprove Amendment 19, including those postmarked or otherwise transmitted, but not received by NMFS, by the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2016.

Emily H. Menashes,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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